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ABSTRACT

Guidelines are offered for supervision of school athletic activities with emphasis upon safety and legal responsibility. Of particular importance is selection of activities suitable for participants, safe facilities and equipment, knowledge of first aid, and the use of good teacher/coach judgment. (JD)

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Teaching Physical Education: The Issues of Safety and Liability

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While there are no readily available figures to indicate exactly how many people are injured annually in sports related activities, or how many of these injuries were preventable or how many resulted in lawsuits, one fact is clear; physical educators are far more likely to be sued than are other members of the teaching profession. This fact has become the focus of considerable concern in recent years because the number of suits affecting teachers and the schools in general has risen astronomically. This increase, while alarming, is not at all surprising when one considers that people are becoming increasingly aware of their legal rights with regard to negligence claims. Essentially those rights allow any person to bring a tort action against any other person at any time. A tort is an alleged act of omission or commission causing personal injury or loss of property for which remuneration may be sought through judicial process. A second factor affecting the number of lawsuits in the field is the sheer number of injuries which occur. Depending upon the type and level of activity, anywhere between 10 percent and 70 percent of the participants in physical education and athletics are likely to sustain some form of injury annually.

Clearly we are in a field where the likelihood of injury and, hence, the likelihood of a lawsuit are considerably above the norm. Add to this the fact that, in the past, most insurance companies have chosen to make generous out-of-court settlements rather than risk a major financial loss through a jury trial, and you have a situation where even a weak case can appear financially advantageous. The situation is further compounded by the public's increased awareness of their legal rights and of the financial rewards of a successful suit or settlement.

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Several elements are necessary before an injured party can successfully prove his or her case and gain recompense through the courts. It must first be proved that the defendant or defendants bore a legal responsibility or duty to safeguard the well-being of the injured party. The plaintiff or injured party must then prove that some negligent act committed by the defendant breached this duty. Simply stated, negligence is the failure to do something that a reasonably prudent professional would have done under the circumstances, or the doing of something that a reasonable, prudent professional would not have done. Besides the elements of duty and negligence, the plaintiff must prove that the alleged accident was foreseeable; that is, that the teacher or coach should have been able to anticipate the likelihood of some accidental injury arising from their actions. The final major element of proof is that of proximate cause. Proximate cause is simply a question of whether or not the defendant's negligence caused or aggravated the injury to the plaintiff. Unless proximate cause can be proved, the negligence, itself, is inconsequential.

While this is a simplistic explanation of the legal elements of negligence, it should provide sufficient background knowledge with which to examine those aspects of professional conduct which most frequently give rise to negligence suits.

SUPERVISION

Because good supervision is an essential factor in the provision of a safe learning environment, the adequacy of the supervision provided is questioned in virtually every negligence suit. Supervisory adequacy involves both quantitative and qualitative judgments. Not only is it necessary to provide a sufficient number of teachers to properly control the activity in question, it is also imperative that these teachers be trained and knowledgeable in the particular activity which they supervise.

When teaching, you are obligated to be immediately accessible when needed, to provide specific supervision for those participants who need it, and to be able to detect and avoid any unnecessary dangers. One important aspect of supervision is the responsibility to be sure that all participants understand and appreciate the risks of the activity and adhere to established safety practices.

By observing the following guidelines, you should be able to minimize the likelihood of accidents and injuries which could be attributed to supervisory shortcomings:

1. Always be thoroughly familiar with the activity being taught. You must be an expert.

2. Always have thorough written plans. Anticipate the potential hazards and make plans to avoid them.

3. Establish, publish and enforce safety rules.

4. Never allow unsupervised participation. Leaving the gym to answer the telephone or get equipment exposes the participants to a hazardous unsupervised situation. You must also develop an awareness of your own location with regard to the participants. If your back is to one or more people they are not being supervised. Careful organization of groups and an awareness of your own movements among the groups can easily prevent such supervisory problems.

5. Never leave an unsupervised gymnasium open to the public. The gym is, in a very real sense, an attractive nuisance. There are a large variety of ways to get hurt in the gymnasium and the activities are particularly attractive to people of all ages. Any facility which is readily accessible to the public, and which exposes the public to a greater than normal degree of risk, must be supervised.

6. Before sending students on errands, be sure that it is important enough to justify the risk of allowing them to be unsupervised for a period of time and that the students selected can be trusted to act responsibly.

SELECTION OF THE ACTIVITIES

Teachers and coaches are obligated to select activities which are appropriate for the ability level of the participants. While very few activities are regarded as unsafe in and of themselves, any activity can become unsafe if

the participant is not physically or mentally prepared for it. Given the heterogeneity of the average coeducational physical education class, it is imperative that the teacher be able to individualize instruction and class participation in order to guarantee safety and optimize learning.

Some general guidelines to be followed in the selection of activities include:

1. Be sure there is a sound justification, consistent with the educational goals and objectives of the school for any activities taught.

2. Develop comprehensive unit plans which outline sound learning progressions for all students. Develop daily lesson plans based upon these units and upon the rate of student progress. Good lesson plans can provide tangible evidence of the fact that you considered student abilities and background in planning.

3. Always have rainy day lessons prepared which correspond to the activity originally planned, or at least, call for a safely organized alternative. Far too many accidents occur when a football or field hockey lesson gets rained out and the teacher is left to ad-lib a mass game in the gym. These games are often poorly planned and virtually impossible to justify educationally and hence result in an unfavorable jury verdict in the event of a negligence suit.

ENVIRONMENTAL CONDITIONS

Before any instructional or recreational area is used or any piece of equipment is issued it should be thoroughly examined for safety and proper set-up. Such things as broken glass, rocks, potholes and improper field alignment can render a field dangerous under normal use and lead to unnecessary injuries and lawsuits. The provision of faulty equipment, or the improper installation and maintenance of equipment can similarly cause unnecessary hazards.

As a general rule, every teacher or coach should begin each day with a walking tour of the facilities to insure their safety and availability. All equipment should be inspected before use and again before it is put away, and under no circumstances should faulty or defective equipment be used.

Some specific guidelines regarding environmental conditions are:

1. Be sure that all appropriate safety equipment is provided for the participants.

2. Be sure that all permanent equipment is professionally installed and meets appropriate safety recommendations, e.g., thickness of matting, free area around apparatus, nature of surface under the equipment, proximity to hazardous obstacles.

3. Develop a regular inspection and maintenance schedule for all facilities and equipment.

4. Replace all worn or defective items immediately.

5. If a particular hazard cannot be eliminated, mark it clearly and keep all participants out of the area.

6. Use signs, posters, etc., to constantly remind all participants of the safety rules regarding each facility and/or activity.

7. Teach your students the importance of safe equipment and require them to inspect equipment before they use it.

FIRST AID

While first aid is often considered an aspect of supervisory responsibility, I feel that the issue is important enough to justify consideration in its own right. All persons with an instructional or supervisory responsibility are expected to know and be able to apply proper first aid and emergency lifesaving procedures. It is wise, therefore, to:

1. be sure that you are well trained in first aid and remain up-to-date on new techniques and procedures.

2. develop thorough written procedures to be followed in the event of accident or emergency. These should be prominently posted and should include emergency telephone numbers.

3. be sure all necessary first aid equipment and supplies are available and easily accessible.

4. develop and use thorough accident report forms, to include a description of the incident, type of first aid applied, names of witnesses and follow-up. While this will not prevent accidents, it may help provide evidence regarding the propriety of your behavior should a lawsuit arise.

TEACHER JUDGMENT

The area of judgment is quite broad and can encompass virtually every decision you make. As a professional, you are expected to exercise sound judgment at all times. Insofar as your judgment or lack of it places an unnecessary or avoidable risk upon the participant, you may be held liable. While the participant must, of necessity, be exposed to certain risks in the normal course of some activities, the teacher or coach is always obligated to think before acting and to minimize the risks wherever possible. Some judgmental guidelines would include:

1. Think before you act.

2. Never ask students to perform any tasks where the dangers are unnecessarily high.

3. Take whatever steps may be necessary to avoid the mismatching of student abilities in situations where physical contact is likely. Remember also that the matching of abilities is a question of size, strength and experience, not sex.

4. Be sure to select activities which are within the scope of the curriculum guide. Activities designed to build "courage" or those with catchy names like "suicide vaults," "killer drills" and "murder ball" could be very difficult to justify to a jury.

Unquestionably our profession, by its very nature, is highly susceptible to legal actions based upon allegations of negligence. Many injuries are virtually unpreventable; they will occur despite our most conscientious efforts to the contrary. There are, however, a large number of injuries which are the direct result of careless behavior. It is this type of injury that most frequently results in allegations of negligence and, not surprisingly, bears the highest probability of plaintiff success should the issue be brought to trial.

The solution to the liability problem is really quite simple. Each and every one of us must carefully plan and organize our classes and programs to maximize the safety and eliminate unnecessary or excessive dangers. As long as we keep the welfare of the participant uppermost in our minds, the likelihood of a negligence related injury can be held to an acceptable minimum.